IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. MANIKUMAR

WRIT APPEAL No.962 OF 2006
and M.P.NO.1 of 2006

R. Dakshinamoorthy .. Appellant/Petitioner

vs.

1. The State of Tamil Nadu
   rep. By the Secretary to Government
   Revenue Department
   Secretariat, Chennai 9.

2. The District Collector
   Villupuram.

3. The Tahsildar
   Thirukoilur Taluk
   Villupuram District.

4. Nandhini Constructions
   rep. By its Partner R.V. Kamalanadhan
   No.12, Srinivasa Street
   Erode 1.
   (R.4 impleaded as necessary party
   respondent vide order of Court
   dt.11.08.2006 made in
   MP.No.2 of 2006). .. Respondents(Respondents)

Writ Appeal filed under Clause 15 of Letters Patent Act against the order of the learned Judge Mr. Justice A. Kulasekaran, dated 13.07.2006 made in W.P.No.32217 of 2005.

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WP.No.32217/05 :

Petition presented to this Court under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents, their men, agents, servants and officials from interfering with the peaceful possession and enjoyment of land in Punjai Survey No.328, on extent of 66 cents and in Survey No.496/21, on extent of 2.54 acres situated at Thiruvannainallur Village (North) Thirukoilur Taluk by the petitioner.

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For appellant : Mr. N.G.R. Prasad
for Mr. S. Ambigapathy
For respondents : Mrs. D. Geetha, AGP(W) forR.1 to 3
Mr. K.M. Vijayan, Senior Counsel
for M/s. La and Law for R.4

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

By consent of all the parties, the main writ appeal itself is taken up for disposal.

2. Aggrieved by the order of the learned single Judge dated 13.07.2006 made in W.P.No.32217 of 2005, the writ petitioner R. Dakshinamoorthy, has filed the above writ appeal.

3. For the sake of convenience, we shall refer the parties as arrayed in the writ petition.

4.According to the petitioner, he filed a suit in O.S.No.352 of 2003 on the file of Principal District Munsif, Thirukovilur for permanent injunction restraining the defendants therein from planting trees in the suit properties. There is a specific averment in the plaint that the land was originally assigned in favour of one Ponnuranga Pillai in the year 1968 and the said Ponnuranga Pillai sold the same in favour of one Pakkirisamy on 15.12.1971. The said Pakkirisamy was in possession and enjoyment of the land without interruption up to 14.02.1983 on which date, he sold the land in favour of the petitioner for lawful consideration by way of a registered sale deed dated 14.02.1984. Patta was also issued in the name of Pakkirisamy in Patta No.125, followed by the assignment in his favour in 1971. Subsequently the petitioner came to know that the assignment given in favour of Ponnuranga Pillai was cancelled. The learned District Munsif, Thirukovilur dismissed the suit filed by the petitioner and he preferred an appeal in A.S.No.126 of 2004 before the Subordinate Judge, Villupuram and the learned Subordinate Judge, Villupuram allowed the appeal by judgment and decree dated 15.06.2005. Since the petitioner and his vendor are in continuous possession and enjoyment of the land in question for more than 30 years,the respondents have got no right to interfere in his possession. In spite of the objection by the petitioner, the Tahsildar with his subordinates, the Assistant Engineer, Tamil Nadu Electricity Board, the President, Town Panchayat and the Forest officials trespassed into his land and destroyed the standing crops. The officials of respondents 2 and 3 are storing blue jelly stones and cement bags, etc., in his land. Their conduct is contemptuous of judgment and decree of the learned Subordinate Judge dated 15.06.2005; hence, he prayed for writ of Mandamus forbearing the respondents,their men and officials from interfering with his possession and enjoyment of the land in Survey No.328 of an extent of 66 cents and in Survey No.496/21 of an extent of 2.54 acres situated at Thiruvannainallur Village (North), Thirukovilur Taluk.

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5. The third respondent, Tahsildar, Thirukovilur Taluk, has filed a counter affidavit before the learned single Judge stating that though the land in question was assigned to one Ponnurangam Pillai in the year 1968, the said assignment was subject to certain conditions as per which, the land should not be alienated to any third party, at least for a period of 10 years. But, the assignee of land, viz., Ponnurangam Pillai violated the said conditions and sold the land to one Pakkirisamy by sale deed dated 15.12.1971, i.e., within three years from the date of assignment. During 1983, the Revenue Department took cognizance of the illegal transfer of land by the assignee and ultimately, the assignment was cancelled after giving notice to the legal heirs of the original assignee, as the original assignee died and also to the subsequent purchaser, Pakkirisamy on 20.03.1983. The land was reclassified as Government land. Thereafter, the subsequent purchaser Pakkirisamy set up a case of transfer of title in favour of his own brother-in-law, viz., the writ petitioner R. Dakshinamoorthy and filed a civil suit. Pursuant to the dismissal of suit on 03.08.2004 in O.S.No.352 of 2003 on the file of District Munsif, Thirukoilur, the Government of Tamil Nadu passed a Government Order in G.O.299 dated 18.05.2205, transferring the entire extent of land in S.No.496/21 of an extent of 1.3.0 hectares for the purpose of constructing a Higher Secondary School for Girls as the existing Government Girls High School in 20 cent land is proved to be insufficient and the Government also permitted to construct a multi-storied building in the said site through NABARD.

6. The District Collector, second respondent has also filed a counter affidavit reiterating the stand taken by the third respondent. He has stated that by invoking Sections 5 and 6 of the Tamil Nadu Land Encroachment Act, 1905, the land was taken by the Government after removing the encroachment.

7. It is brought to our notice that pending disposal of the writ petition, the petitioner secured an interim order of injunction and ultimately the same was made absolute till the disposal of petition. Against that, one K. Saravana Kumar, President, Parent-Teachers Association, Government Girls Higher School, Thiruvennainallur filed Writ Appeal No.423 of 2006 in which, by order dated 23.05.2006, a Division Bench of this Court, after finding that the writ petitioner is not in possession of the land in question and the possession is with the School and the construction of School building is in progress and reserving the question, whether the petitioner was served notice under Sections 6 and 7 of the Act to be decided, allowed the writ appeal. When the writ petition came up for hearing on 13.07.2006, the learned single Judge, without going into all the above factual details, dismissed the writ petition with a direction to the petitioner that if there is any violation of the decree of the Civil Court, he can very well invoke the remedy provided under law.

8. Heard Mr. N.G.R. Prasad, learned counsel for the appellant, Ms. D. Geetha, learned Additional Government Pleader for respondents 1 to 3 and Mr. K.M. Vijayan, learned senior counsel for the 4th respondent.

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9. Mr. N.G.R. Prasad, learned counsel for the appellant, after taking us through the decree of the Sub Court made in A.S.No.126 of 2004, vehemently contended that in view of the said decree, in the absence of proper compliance of notice under Sections 7 and 6 of the Act respectively, the possession of the petitioner should be protected by this Court and the learned single Judge ought not to have dismissed the writ petition.

10. On the other hand, Ms. D. Geetha, learned Additional Government Pleader contended that the decree is not an absolute one and even as per the decree, after proper notice under the Tamil Nadu Land Encroachment Act, the petitioner can be evicted and in fact, by due process of law the encroacher was effected from the land and the said land was validly assigned by the Government for the purpose of constructing a Girls Higher Secondary School. She also contended that after taking possession, with the assistance of NABARD, additional buildings are being constructed and hence, no interference is called for at this juncture.

11. Mr. K.M. Vijayan, learned senior counsel for the 4th respondent reiterated the stand taken by the official respondents and prayed for the dismissal of writ appeal.

12. It is not in dispute that the petitioner secured a decree for bare injunction in A.S.No.126 of 2004 on the file of Subordinate Judge, Villupuram. However, the officers concerned are entitled to vacate him from the land in question by following due process of law. It is the claim of the learned counsel for the petitioner that before evicting the encroacher, a show-cause notice under Section 7 of the Act is mandatory and thereafter, an order under Section 6 of the Act has to be passed. According to Mr. N.G.R. Prasad, those provisions have not been strictly complied with and hence, the action on the part of the Government in assigning the land in favour of the School and the consequential action on the part of the 4th respondent in constructing buildings thereon cannot be sustained.

13. In the counter affidavits, both the Tahsildar and the Collector have specifically stated that after dismissal of the suit in O.S.No.352 of 2003 filed by the petitioner, taking note of the fact of insufficient space for the Government High School, Thiruvannainallur, the Government assigned the subject matter of land. It is also their specific claim that by following the procedure as provided in the Tamil Nadu Land Encroachment Act, possession was taken and now construction work is on the way. The learned senior counsel appearing for the 4th respondent has also pressed into service the factual finding rendered by the Division Bench in W.A.No.423 of 2006 dated 23.05.2006. We have already referred to the fact that the said appeal came to be filed by K.Saravanakumar, President, Parent-Teachers Association against the grant of injunction. After verifying the report of the Advocate Commissioner, the Division Bench in para 12 has concluded,

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> "12. A perusal of the said Advocate Commissioner's report reveals that construction of the school building has already commenced and there is no crop in the said land. Taking note of the said Commissioner's report and having regard to the assignment of land to the School and commencement of the construction of school building, we feel it proper to hold that the first respondent / writ petitioner is not in possession of the land in question and the possession is with the school and that the construction of school building is in progress. The grievance of the first respondent that he was not duly evicted by following the mandatory procedures as contemplated under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905, cannot be decided in this writ appeal. It is open to the first respondent/writ petitioner to establish his right in the main writ petition. As the construction of the School building has already commenced, the completion of the same will be subject to the result of the writ petition. ..."

As rightly pointed out, though it is a factual finding in the order passed in an appeal filed against the order in interlocutory application, the said conclusion cannot be ignored lightly. It shows that the writ petitioner is not in possession of the land in question and on the other hand, the possession is with the School and the construction of school buildings is in progress.

14. We have oft-repeatedly held that in order to evict a person in occupation of a Government land unauthorisedly, the authorities have to issue a show-cause notice under Section 7 of the Land Encroachment Act, and if the encroacher submits his objection/representation, the same has to be considered and an order under Section 6 of the said Act has to be passed asking him to vacate and hand over possession within a prescribed period.

15. Now, let us verify whether such procedure has been complied with or not. The learned Additional Government Pleader has invited our attention to the notices issued under the Land Encroachment Act. She very much relied on the details found in the notice issued under Section 6 of the Land Encroachment Act. Though the first notice is stated to be issued under Section 5 of the Act, on going through the contents of the same, we are of the view that it is a notice issued under Section 7 of the Act. Likewise, the annexure to notice issued under Section 6, which is available at page 11 and 12 of the typed set filed by the learned Additional Government Pleader shows that the petitioner was afforded opportunity either to put forth his objection or to vacate and hand over possession within 15 days. Though as rightly pointed out by Mr. N.G.R. Prasad, notice said to have been issued are not in exact term of Sections 6 and 7 of the Act, the fact remains necessary intimation was sent, particulars were furnished,

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opportunity was afforded to the petitioner and in view of the same it cannot be claimed that no proper compliance of the provisions of the Land Encroachment Act.

16. It is also brought to our notice that on the basis of the request made by the Educational authorities, the land in Survey No.496/21 was assigned by the Government in favour of the Government Girls High School for the purpose of construction of buildings, vide, G.O.Ms.No.299 Revenue dated 18.05.2005, which is available at page 14 of the typed set of papers filed by the learned Additional Government Pleader. The said Government Order came to be passed at the request of the District Collector and subject to fulfilling of certain conditions. Apart from the said Government Order, we verified the photographs produced by the petitioner as well as the 4th respondent and we are satisfied that a huge building is on the way and at this stage it is not open to the petitioner to contend that the possession is still with him. Accordingly, we are unable to accept the stand taken by the petitioner.

Under these circumstances, we do not find any valid ground for interference. Accordingly, the appeal is devoid of merits and the same is dismissed. No costs. Consequently, connected MP., is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary to Government
Revenue Department
Secretariat, Chennai 9.

2.The District Collector
Villupuram.

3.The Tahsildar
Thirukoilur Taluk
Villupuram District.

1 cc To M/s. La Law, Advocate, SR.41276.
2 cc To Mr.S.Ambigapathy, Advocate, SR.41109.
1 cc To The Government Pleader, SR.41407.

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AKM(CO)
RVL 12.09.2006

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